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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/507,085	09/08/2004	Jurgen Kassner	FRM-04601	8839
26339	7590	06/04/2007		
MUIRHEAD AND SATURNELLI, LLC 200 FRIBERG PARKWAY, SUITE 1001 WESTBOROUGH, MA 01581			EXAMINER RUDDOCK, ULA CORINNA	
			ART UNIT 1771	PAPER NUMBER
			MAIL DATE 06/04/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/507,085

**Applicant(s)**

KASSNER, JURGEN

**Examiner**

Ula C. Ruddock

**Art Unit**

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 and 22-25 is/are pending in the application.
- 4a) Of the above claim(s) 19, 20 and 22-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 12, 2007, has been entered.
2. The Examiner has carefully considered Applicant's amendments and accompanying remarks filed March 12, 2007.

### ***Claim Rejections - 35 USC § 102/103***

3. Claims 1-18 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over DE 19652584 (DE '584). DE '584 discloses a textile lattice for use to reinforce bitumen-bound layers. Intersecting threads consist of man-made fibers that are applied on a thin nonwoven by Raschel knitting (abstract). A bonding substance having an affinity to bitumen treats both the threads and the nonwoven. The underside of the composite of the textile lattice and nonwoven may be provided with a bituminous mastic. The lattice threads are made of polyvinyl alcohol. The lattice threads are surrounded by Raschel locking threads, which the Examiner is equating to Applicant's binding threads.

Although DE '584 does not explicitly teach the claimed ductile yield, that the force absorbed by the polyvinyl alcohol strands increases into the range of the ductile yield in proportion to the value of the strain of the strands, that the two intersecting strands have a ductile yield that

corresponds to or is approximately equal to a ductile yield of the bituminous layer, and that the absorbed stress value of the two intersecting strands for a given cross section is approximately proportional to a value of strain in the strands, it is reasonable to presume that these properties are inherent to the invention of DE '584. Support for said presumption is found in the use of like materials (i.e. polyvinyl alcohol lattice, nonwoven backing, bonding substance, and binding threads). The burden is upon Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. In addition, the presently claimed property of a ductile yield between 3-6%, that the force absorbed by the polyvinyl alcohol strands increases into the range of the ductile yield in proportion to the value of the strain of the strands, that the two intersecting strands have a ductile yield that corresponds to or is approximately equal to a ductile yield of the bituminous layer, and that the absorbed stress value of the two intersecting strands for a given cross section is approximately proportional to a value of strain in the strands would obviously have been present once the product of DE '584 is provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977) as to the providing of this rejection made above under 35 USC 102.

***Rejection is maintained.***

#### ***Response to Arguments***

4. Applicant's arguments filed March 12, 2007, have been fully considered but they are not persuasive for the reasons set forth. Applicant argues that the polyvinyl alcohol threads of DE '584 do not necessarily have the claimed ductile yield range of greater than 3% and less than 6%, as evidenced by the *Kuralon Filament by Kuraray Co., Ltd.* document, which discloses a PVA filament yarn having a ductile yield range of 6.7-13.5%. This argument is not persuasive because a prima

facie case of obviousness exists where the claimed ranges and prior art ranges do not overlap but are close enough that one skilled in the art would have expected them to have the same properties. *Titanium Metals Corp. of America v. Banner*, 778 F. 2d 775, 227 USPQ 773 (Fed. Cir. 1985). It is the Examiner's position that Applicant's limitation of less than 6% ductile yield and the teaching by the *Kuralon Filament by Kuraray Co., Ltd.* of a PVA filament yarn having a ductile yield range of 6.7% are close enough and one skilled in the art would expect them to have the same properties. Furthermore, Applicant has not shown or proven that the PVA threads of DE '584 do not have the claimed ductile yield range. Therefore, the rejection is maintained.

#### **Conclusion**

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ula C. Ruddock whose telephone number is 571-272-1481. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H. Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

UCR

*UCR*

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